the manner of exercising such custody; that if by reason of the gross carelessness of the servant the gun exploded and caused injury to another, the master should be held liable in damages to such other.

MUNICIPAL CORPORATIONS—LIABILITY FOR FAILURE OF POLICE TO ENFORCE ORDINANCE.—A city council adopted an ordinance prohibiting the setting off of fireworks within the city limits, except at such times and places as the mayor might permit. The mayor not having exercised such discretion, the police allowed the fireworks and practically suspended the ordinance. A pedestrian was injured by a skyrocket and sued the city, imputing to it no negligence, but seeking to fix its liability on the ground of unauthorized action by the police in allowing a violation of the ordinance. *Held*, the city was not liable. *Gilchrist* v. *City Council of Charleston* (S. C.), 105 S. E. 741.

A municipal corporation is an agency created by the State for the purpose of carrying out in detail the objects of government, and having subordinate and local powers of legislation. *Philadelphia* v. *Fox*, 64 Pa. St. 169; *Heller* v. *Stremmel*, 52 Mo. 309. It possesses such powers and such only as the State confers upon it, and among these is the police power. *Ottawa* v. *Carey*, 108 U. S. 110; *People* v. *Pierce*, 83 N. Y. Supp. 79.

The police power of the State, thus conferred upon municipal corporations, is inherent in the nature and indispensable to the existence of all self-governing bodies, since in its essence it is governmental. *City of Crawfordsville* v. *Braden*, 130 Ind. 149, 28 N. E. 849, 14 L. R. A. 268, 30 Am. St. Rep. 214. Police officers can in no sense be regarded as agents or servants of the city. Their duties are of a public nature. The preservation of the public peace and the enforcement of the laws are derived from the law, and not from the city or town under which these officers hold their appointment. *Buttrick* v. *Lowell*, 1 Allen (Mass.) 172.

The question results, is the city liable for torts committed in the exercise of governmental functions?

The general doctrine resolves this question in the negative. *Irvine* v. *Town of Greenwood*, 89 S. C. 511, 72 S. E. 228; *Triplett* v. *Columbia*, 111 S. C. 7, 96 S. E. 675; *Hill* v. *Boston*, 122 Mass. 344. It is liable, if it negligently fails to keep its streets in a reasonably safe condition, for purposes of public travel, to those who are injured without negligence on their part. *Mayor, etc., of Baltimore* v. *Bassett*, 132 Md. 427, 104 Atl. 39; *City of Montgomery* v. *Ross*, 195 Ala. 362, 70 So. 634. But it is not answerable in tort for failure to exercise its police power, or for negligence in performing duties in that particular. *Vossler* v. *De Smet*, 204 Ill. App. 292; *Robinson* v. *Greenville*, 42 Ohio St. 625.

It is true that persons employed by a city in a proprietary capacity are agents of the city, which is liable for their acts of negligence performed in the discharge of corporate duties. *Michigan City* v. *Werner*, 186 Ind. 149, 114 N. E. 636. But police officers are agents of the State, not of the city. *Buttrick* v. *Lowell*, *supra*.

The conclusion, therefore, is: that since the conservation of the peace is a public duty put by the State into the hands of various public officials, the maintenance of police and the use of its power is governmental;

that such officials are not agents of the city, but of the State; and that consequently the city is not liable for their unlawful or negligent acts, or for the mode in which they prosecute their duties. *Norristown* v. *Fitzpatrick*, 94 Pa. St. 121.

It is submitted that according to the weight of authority the instant decision is sound.

TORTS—INDEMNITY—NO INDEMNITY WHERE PARTIES ARE IN PARI DELICTO.—In an action brought by the administrator of a person killed by the joint negligence of the plaintiff and defendant in the instant suit, a judgment was rendered against both. In satisfaction of the judgment, the plaintiff and defendant have each paid one half of the damages. The plaintiff then brought this action for indemnity. *Held*, no indemnity allowed. *North Carolina Elec. Power Co.* v. *French Broad Mfg. Co.* (N. C.), 105 S. E. 394.

The precise question involved in the instant case has been before the courts many times, with the majority of the courts upholding the view herein adopted. *Alaska Pacific S. S. Co.* v. *Sperry Flour Co.*, 107 Wash. 545, 182 Pac. 634; *Detroit, etc., R. Co.* v. *Boomer*, 194 Mich. 52, 160 N. W. 542.

In considering a question of this kind, difficulty is always encountered in deciding whether the case is covered by the general rule applicable, or by the exceptions. The general rule, universally adopted by the courts, is that as between actual joint tortfeasors, parties *in pari delicto*, the law will not enforce indemnity but will leave them where the joint offense left them. *Village of Portland* v. *Citizens Telephone Co.*, 206 Mich. 632, 173 N. W. 382; *Rio Grande, etc., R. Co.* v. *Guzman* (Tex. Civ. App.), 214 S. W. 628. But this rule is restricted to cases where the joint tortfeasor who has been forced to respond in damages, knew, or must have known, that an act in which he participated was unlawful. *Vandiver* v. *Pollak*, 97 Ala. 467, 12 So. 473, 19 L. R. A. 628; *Acheson* v. *Miller*, 2 Ohio St. 203, 59 Am. Dec. 663. Therefore, the courts have come to recognize two important exceptions to the rule as generally applied.

The exceptions are: (1) That there shall be contribution between the wrongdoers, where the negligence of one is passive as distinguished from the active negligence of the other. *City of Weatherford, etc., Co.* v. *Veit* (Tex. Civ. App.), 196 S. W. 986; *Hart Township* v. *Noret*, 191 Mich. 427, 158 N. W. 17. (2) That where the party seeking indemnity has not been guilty of any fault, except technically or constructively, contribution or indemnity is freely enforced. *Georgia, etc., R. Co.* v. *Jossey*, 105 Ga. 271, 31 S. E. 179; *Smith* v. *Foran*, 43 Conn. 244, 21 Am. Rep. 647.

The instant case not coming within these exceptions, the decision seems eminently sound.

For Virginia law on the subject, see Va. Code, 1919, § 5779, providing: "Contribution among wrongdoers may be enforced where the wrong is a mere act of negligence, and involves no moral turpitude."